

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 98-5 Erie
)
MARCREESE McCOY)

MOTION TO DISMISS SUPERSEDING INDICTMENT

AND NOW comes the United States of America, by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Marshall J. Piccinini, Assistant United States Attorney for said district, and respectfully moves this Honorable Court for an order dismissing the superseding indictment as to defendant Marcreese McCoy in the above-captioned case, and in support of this motion avers as follows:


On June 16, 1998, a superseding indictment was returned by the grand jury in the above case charging defendant Marcreese McCoy with violation of Title 21, United States Code, Section 846, conspiracy to possess with intent to distribute crack cocaine and marihuana; Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(iii) and Title 18, United States Code, Section 2, possession with intent to distribute in excess of 50 grams of crack cocaine; Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2, possession with intent to distribute less than 500 grams of

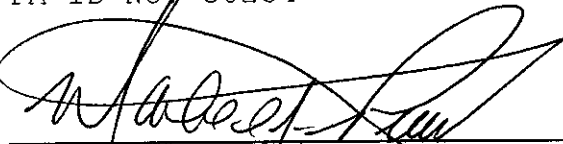
marihuana; and Title 18, United States Code, Section 922(g)(1), possession of a firearm by convicted felon.

Although McCoy was convicted after a jury trial on November 4, 1998, on February 2, 2006, the District Court granted McCoy's claim of ineffective assistance of defense counsel under Title 28, United States Code, Section 2255, and reversed his conviction.

The United States has evaluated whether sufficient evidence remains in the custody of the Federal Bureau of Investigation from this 1993 investigation to support a new trial.

The reason for dismissal of the superseding indictment is that sufficient evidence to support a conviction of McCoy at a new trial no longer exists.


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